



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Anthony Washington
Washington, D.C. 20011

DEC 11 2009

RE: MUR 6110
M&A Development, LLC

Dear Mr. Washington:

On November 3, 2008, the Federal Election Commission notified M&A Development, LLC, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on November 17, 2009, voted to dismiss the allegation that M&A Development, LLC, violated 2 U.S.C. 441b(a) and closed the file in this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Based on the information before the Commission, it appears that M&A Development, LLC, may have contributed something of value to Obama for America and the Democratic National Committee. Specifically, corporations are prohibited from making any contributions to candidates for federal office, including facilitating the making of a contribution by using their corporate resources to engage in fundraising activities in connection with any federal election. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(f)(1). A limited liability company ("LLC") such as M&A Development, LLC, is considered a corporation or a partnership under the Act depending on whether it elects to be treated by the Internal Revenue Service as a corporation or a partnership. *See* 11 C.F.R. § 110.1(g). If an LLC is considered to be a partnership, it may make contributions to a candidate for federal office subject to the limit in 2 U.S.C. § 441a(a)(1)(A), which was \$2,300 per election during the 2008 election cycle. *See* 11 C.F.R. § 110.1(e). A contribution by a partnership is attributed to the partnership and to each partner. *Id.* A contribution includes anything of value made by any person for the purpose of influencing a Federal election. 2 U.S.C. § 431(8)(A)(i). The term "anything of value" encompasses any goods or services provided without charge or at less the usual and normal charge unless otherwise specifically exempted. *See* 11 C.F.R. § 100.52(d)(1). Corporate names, trademarks, and service marks can be valuable corporate resources, and corporations may invest substantial resources in choosing a trademark, developing its value, and defending it. A corporation's name and trademark, therefore, are things of value owned by the corporation. Because the Act prohibits

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corporations from contributing anything of value to committees, or using their resources to facilitate contributions to committees, a donation by a corporation of its trademark to a committee (for example, to use on a solicitation for contributions to a committee or to indicate the corporation's support for a candidate) would constitute an impermissible corporate contribution. The Commission cautions M&A Development, LLC, to ensure compliance with 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f)(1) in the future.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact Michael Columbo, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT:** M & A Development, LLC

MUR 6110

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7 **I. GENERATION OF MATTER**

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9 This matter was generated by a complaint filed with the Federal Election Commission by

10 Robert J. Kabel, on behalf of the District of Columbia Republican Committee. *See* 2 U.S.C.

11 § 437g(a)(1).

12 **II. INTRODUCTION**

13 The complaint alleges that M&A Development, LLC, was one of three corporations
14 (together, "Businesses") that sponsored a fundraising event in September 2008 called the
15 "Concert for Change" that was allegedly held by Obama for America ("OFA"), the principal
16 campaign committee of Barack Obama for his 2008 presidential campaign, the Democratic
17 National Committee ("DNC"), and the Obama Victory Fund ("OVF"), a joint fundraising
18 committee that disburses its proceeds to the DNC and OFA, (together "Committees"). The
19 Concert for Change (the "Concert") was held at the Atlas Theater in Washington, D.C., and,
20 according to one of the Concert's web pages, it raised \$13,500 in contributions. The complaint
21 alleged that Businesses that sponsored the Concert made prohibited corporate contributions in
22 violation of 2 U.S.C. § 441b(a) or facilitated contributions in violation of 11 C.F.R. §
23 114.2(f)(1). *See* Complaint at 3-4.

24 As discussed in greater detail below, it appears that the Businesses, which were identified
25 in some of the Concert's promotional materials as "sponsors" of the Concert, did not use their
26 general treasury funds to pay the costs of the Concert. Rather, individuals affiliated with the
27 Businesses used their personal funds to pay the costs of the Concert. The available information

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1 indicates that OVF, OFA, and the DNC were unaware of the Concert until the complaint was
2 filed and that the Concert was not an official or authorized event. The Concert's organizer(s)
3 were not identified in the complaint and there is no information suggesting that they formed an
4 enterprise with ongoing activities or assets.

5 Consequently, the Commission dismisses the allegation that that M&A Development,
6 LLC, violated the Act by making prohibited corporate contributions in connection with the
7 Concert.

8 **III. FACTUAL SUMMARY**

9 According to the complaint, unknown individuals promoted the "Concert for Change" by
10 distributing flyers and signs near the Eastern Market Metro in Washington, D.C., and by
11 establishing web pages that solicited contributions on the OFA and DNC websites. Some of the
12 Concert's promotional materials, which were attached to the complaint, state that the Businesses
13 were "in-kind sponsors" of the Concert.

14 The Concert's unknown organizer(s) rented the Lang Theater, a space within the Atlas
15 Theater at 1338 H Street, N.E., in Washington, D.C., that normally rents for \$6,000, and
16 arranged for singer Steve Washington and the "Doug Elliot Orchestra" to perform. According to
17 the Concert's promotional materials, the event included a cash bar and valet parking. The theater
18 also normally requires event organizers to hire security guards and pay insurance. Sound
19 equipment is not included in the cost of the theater and may also have been an additional
20 expense. According to its website, www.aconcertforchange.org, the event's organizers were able
21 to raise \$13,500, mostly through ticket sales at the theater. The available information does not
22 indicate whether or how the theater box office collected the required contributor information and
23 forwarded the contributions to OVF (or OFA or DNC).

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A. Concert for Change Sign

The complaint alleged that the Concert's organizer(s) distributed flyers and posted signs for the Concert in the Eastern Market area of Washington, D.C. Complaint at 3. A sign, submitted as an attachment to the complaint, describes the Concert as a "concert-cabaret fundraiser for The Obama Campaign" and provides a website address, www.aconcertforchange.org. The sign also states, below the official logo and web address of the Obama campaign (OFA), "FUNDRAISER." The image of the OFA logo is of poor quality, however, as if it was a copy enlarged many times. Near the bottom of that panel, it states "Many thanks to our individual in-kind contributors (sponsors) affiliated with the following organizations" above the names of five people and the names and logos of the Businesses. The first name is that of Chase Alan Moore along with the name and logo of "Square Root Sales" with text which states "real estate marketing, sales, and management." The second set of names, Lisa Williams, Cher Castillo Freeman, and James Williams, is printed above the name and logo of Senate Realty Corporation. The final name and logo combination is that of Anthony Washington and M&A Development.

B. Obama For America Website

The Concert's sign includes a website address for the Concert, www.aconcertforchange.org. That web address redirects visitors to a Concert webpage on the My Barack Obama ("MyBO") section of the OFA website. The MyBO section of the OFA website encouraged and enabled Obama's supporters to create accounts, solicit votes and contributions, and organize events.¹

¹ The link from the main page of the Obama campaign website to its MyBO section states "ORGANIZE LOCALLY WITH OUR ONLINE TOOLS." An instructional video posted on the MyBO website teaches supporters how to use these tools. For example, by typing their address, supporters could obtain from OFA a list of their neighbors to

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1 At the top of the Concert's page on MyBO, there is a graphic that includes the portion of
2 the Concert's sign that depicts the singer, states that it is a fundraiser for the "Obama Campaign,"
3 and lists the names and corporate logos of M&A Development, Senate Realty, and Square Root
4 Sales under the Obama Campaign logo, Obama campaign website address, and the title
5 "Individual in-kind contributor affiliations." No individuals' names are listed with the corporate
6 names and logos in this graphic. The Concert's MyBO page also includes text that details the
7 Concert's date, location, the phone number of the theater's box office, and the cost of
8 tickets/donations. There is also a link for making contributions online that resembles a
9 thermometer indicating the degree to which the Concert's fundraising goal has been met. It
10 appears that the Concert for Change organizer(s) set a goal of \$15,000 or \$30,000 (the Concert's
11 web page inconsistently indicates both of these figures as the Concert's fundraising goal). The
12 text describing the Concert for Change states that contributions will go to OVF, that "your
13 donation is your ticket," and that the box office will have a record of "your" donation. The
14 minimum donation was \$35 although the suggested donation was \$100-500 and the maximum
15 donation was \$4,600. The page concludes with the statement "Many thanks to our generous
16 individual in-kind contributing sponsors" and the same list of names and companies as in the
17 sign described above.

contact, flyers to print and hand out, and the means to report back the results of their contacts with voters so that the campaign "can capture and use that information." Also, as the Concert's web page demonstrates, the MyBO site enabled supporters to create their own web page that solicited contributions, send email messages to their contacts, and organize their own events. The Obama supporters' organizing performance statistics (e.g., events attended, events organized, contributions raised) are recorded and displayed. For fundraising, the site enables the supporter to set a fundraising goal, email their contacts with a personal message soliciting contributions, and track the contributions they raise. The Concert's page on the MyBO site includes a title near the top of the page that states "Personal Fundraising." The MyBO site, including its fundraising section and instructional video, does not contain any warnings that contributions should not be raised using the funds or resources of sources prohibited by the Act, such as corporations, labor unions, and foreign nationals.

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1 Consistent with the sign described above, which indicated that the Concert was a
2 fundraiser to benefit OFA, the MyBO online contribution link on the Concert's webpage
3 includes the text, "Obama '08," which suggests that contributions made through the website
4 were made to OFA. However, the Concert's web page on MyBO also states that "100% of ALL
5 donations go directly to the Obama Victory Fund," the OFA/DNC joint fundraiser. Thus, it is
6 unclear whether the recipient of the contributions made through this web page was OFA or OVF.
7 Moreover, if the recipient was OVF, there is no joint fundraising notice on the Concert's MyBO
8 web page or the contribution page currently connected to the contribution link on the Concert's
9 MyBO web page.² See 11 C.F.R. § 102.17(c).

10 C. Democratic National Committee Websites

11 The Concert's organizers also posted a web page on the PartyBuilder section of the DNC
12 website, www.democrats.org/page/outreach/view/total/aconcertforchange, which solicited
13 donations.³ The text of the web page states a fundraising goal of \$30,000. Like the Concert's
14 web page on MyBO, the Concert's web page on the DNC web site also solicited online
15 contributions. The Concert's DNC web page, like the Concert's poster and web page on MyBO,
16 stated that the Concert was a "fundraiser to support THE OBAMA CAMPAIGN" (emphasis in
17 original) and bore the Obama campaign name, logo, and website address. However, the

² Currently, a disclaimer on the MyBO site says that it is being maintained by "Organize for America," a project of the Democratic National Committee. The donation link on the website leads to a page stating, in part: "Our success required unprecedented resources, and the Democratic National Committee played a major role on the ground efforts that generated record turnout up and down the ticket . . . Please make a donation to the DNC to help fund the efforts it undertook in 2008." Organize for America is the group created within the DNC after the November 2008 election to continue the grassroots organizing begun by OFA and assume control OFA's list of 13 million email addresses. See Chris Cillizia, *Obama Announces Organizing for America* (January 17, 2009) found at <http://voices.washingtonpost.com/thefix/white-house/obama-announces-organizing-for.html>; see also Jim Rutenberg and Adam Nagourney, *Melding Obama's Web to a YouTube Presidency* (January 25, 2009) found at <http://www.nytimes.com/2009/01/26/us/politics/26grassroots.html>.

³ Like the MyBO section of the OFA website, PartyBuilder enables DNC supporters to create and manage a "personal fundraising homepage" for "keeping track of all personal fundraising."

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1 Concert's DNC web page also stated that "100% of donations go directly to the Obama Victory
2 Fund." The Concert's DNC web page also stated that the "individual donors will be recognized
3 by the DNC." Thus, it is unclear whether the recipient of contributions made through this web
4 page was the DNC or OVF. Moreover, if the recipient was OVF, neither the Concert's DNC
5 web page nor the contribution page currently connected to the link on the Concert's web page
6 include a joint fundraising notice. *See* 11 C.F.R. § 102.17(c).

7 Like the poster and OFA MyBO web page described above, the Concert's DNC web
8 page includes the same set of individual names and corporate names and logos below the
9 statement: "Many thanks to our generous gift-in-kind sponsors." The page also contains a
10 graphic similar to that on the OFA MyBO web page that, in addition to stating the name of the
11 musical entertainment at the Concert and the statement that it is a "fundraiser for The Obama
12 Campaign," lists along its right side the names and corporate logos of M&A Development,
13 Senate Realty, and Square Root Sales under the Obama Campaign logo, Obama campaign
14 website address, and the title "In-Kind Sponsors." No individuals' names are listed with the
15 corporate logos in this graphic. At the bottom of the webpage, it states "Copyright 1995-2008
16 DNC Services Corp.," "Paid for by the Democratic National Committee," the DNC address, and
17 "This communication is not authorized by any candidate or candidate's committee."⁴

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⁴ A separate Concert web page on the DNC PartyBuilder website similar in content to the Concert's OFA and DNC web pages described above is found at www.democrats.org/page/event/detail/4vkfp. It largely duplicates the content of the Concert's OFA and DNC web pages described above. The link on the page for making a contribution, in order to obtain a ticket to the Concert, directs the viewer to the Concert's DNC website described above. This page lists Chase Moore as the host of the Concert.

D. M&A Development, LLC

The Concert's promotional materials list the Businesses and affiliated individuals as "individual in-kind contribution sponsors," and one web page listed the Businesses as "In-Kind Sponsors" without the names of any individuals. One of the Businesses identified in the promotional materials is M&A Development, affiliated with Anthony Washington.

A copy of the complaint was sent to M&A Development, LLC, to the attention of Anthony Washington. During a telephone conversation with Washington, he asserted that M&A Development, LLC, made no contribution, either by using its corporate treasury funds or through an in-kind contribution. He noted that M&A has no employees, revenues, or expenses. He also noted that the singer at the concert, Steve Washington, is his brother. Washington submitted a written response to the complaint confirming that M&A Development, LLC, made no contributions to the Concert but that he, personally, contributed \$1,000 to the event. *See* M&A Response at 1.

IV. ANALYSIS

Corporations are prohibited from making any contributions to candidates for federal office, including facilitating the making of a contribution by using its corporate resources to engage in fundraising activities in connection with any federal election. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(f)(1). A limited liability company ("LLC") such as M&A Development, LLC, is considered a corporation or a partnership under the Act depending on whether it elects to be treated by the Internal Revenue Service as a corporation or a partnership. *See* 11 C.F.R. § 110.1(g). If an LLC is considered to be a partnership, it may make contributions to a candidate for federal office subject to the limit in 2 U.S.C. § 441a(a)(1)(A), which was \$2,300 during the

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2008 election cycle. *See* 11 C.F.R. § 110.1(e). A contribution by a partnership is attributed to the partnership and to each partner. *Id.*

It is not clear from the Concert's promotional materials whether the Concert's "sponsors" were the named individuals acting in their personal capacity, or were the businesses associated with those individuals. For instance, the Concert's sign states "Many thanks to our *individual* in-kind contributors (sponsors) affiliated with the following organizations" (emphasis added), and it lists the names of individuals above their affiliated corporate logos. The Concert's MyBO web page also thanks the Concert's "generous individual in-kind contribution sponsors" and lists the same individual names and business names. The Concert's MyBO webpage also includes a graphic that identifies the Businesses as "Individual in-kind contributor affiliations" but does not list the individuals associated with the Businesses within the graphic. The clearest indication that the Businesses may have made or facilitated contributions is found in the Concert's DNC webpage which includes a graphic that identifies the Businesses as the Concert's "In-Kind Sponsors" without any mention of individual contributors/sponsors. At the bottom of the Concert's DNC webpage, it lists both individuals and the Businesses with which they are affiliated as "gift-in-kind sponsors."

The available information indicates that no corporate or other business entity's funds were used to pay for the costs of the Concert. Rather, individuals named in the promotional materials used their personal funds and volunteered in their individual capacity.⁵ A related issue, however, is whether the inclusion of business entity names and logos in the Concert's promotional materials constituted a contribution by those businesses.

⁵ A search of the FEC disclosure database did not reveal any disclosures by the Committees indicating that they received contributions from the individuals named in the Concert's promotional materials.

1 Although the use of the companies' names and logos in this matter may have constituted
2 a contribution from Square Root Sales to the Committees, for the reasons set forth below, the
3 Commission dismisses the allegation that Square Root Sales violated the Act through
4 contributions made to the Committees.

5 A contribution includes anything of value made by any person for the purpose of
6 influencing a Federal election. 2 U.S.C. § 431(8)(A)(i). The term "anything of value"
7 encompasses any goods or services provided without charge or at less the usual and normal
8 charge unless otherwise specifically exempted. *See* 11 C.F.R. § 100.52(d)(1). Corporate names,
9 trademarks, and service marks can be valuable corporate resources, and corporations may invest
10 substantial resources in choosing a trademark, developing its value, and defending it. A
11 trademark is a limited property right in a "particular word, phrase or symbol." *See New Kids on*
12 *the Block v. News America Pub., Inc.*, 971 F.2d 302, 306 (9th Cir. 1992). Trade names are also
13 protected when they acquire a "secondary meaning" in that they "symbolize a particular
14 business." *Madrigal Audio Labs., Inc. v. Cello, Ltd.*, 799 F.2d 814, 822 (2d Cir. 1986).

15 A corporation's name and trademark, therefore, are things of value owned by the
16 corporation. Because the Act prohibits corporations from contributing anything of value to
17 committees, or using their resources to facilitate contributions to committees, a donation by a
18 corporation of its trademark to a committee (for example, to use on a solicitation for
19 contributions to a committee or to indicate the corporation's support for a candidate) would
20 constitute an impermissible corporate contribution.

21 Accordingly, the Commission has previously considered corporate names and trademarks
22 to be things of value. In MUR 5578 (Wetterling for Congress), the complaint alleged that a
23 committee received a corporate contribution when it allegedly used a corporation's trademark

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1 (America's Most Wanted) in a campaign ad. *See* MUR 5578 Complaint at 1-2 . The
2 Commission approved the recommendation of the General Counsel's Office to find no reason to
3 believe that Wetterling for Congress violated the Act for several reasons, including that the
4 committee paid for all advertising expenses, the advertisement did not include or suggest a
5 corporate endorsement, and the fact that the alleged corporate logo used in the campaign ad at
6 issue was not the alleged contributing corporation's logo. *See* MUR 5578 Certification of
7 Commission's Actions on February 22, 2006; First General Counsel's Report at 4-8.

8 In Advisory Opinion 2007-10 (Reyes), the Commission concluded that a committee
9 holding a fundraising golf tournament could not give recognition to its contributors by posting
10 signs at particular holes with the contributors' names and job titles as well as the name,
11 trademark, or service mark of their employers. *See* AO 2007-10 (Reyes) at 3. The AO requestor
12 stated that its inclusion of the names, trademarks, and service marks of its contributors' corporate
13 employers was intended to encourage contributions. *Id.* at 2. The Commission concluded that
14 corporate names, trademarks, and service marks "are corporate resources" and, because neither a
15 corporation nor its agents may use the corporation's resources to facilitate the making of
16 contributions to a federal political committee, the proposed activity would violate the Act. *Id.* at
17 2-3. In AO 2007-10 (Reyes), the Commission distinguished AO 1984-43 (Brunswick) and AO
18 1978-77 (Aspin), in which the Commission concluded that a candidate's endorsers may be
19 identified with their corporate positions in campaign-funded advertisements, noting that neither
20 involved the use of corporate resources to facilitate contributions and that both predated the
21 Commission's corporate facilitation regulations. *Id.* at 3; *see also Corporate and Labor*

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1 *Organization Activity; Express Advocacy and Coordination with Candidates Explanation and*
2 *Justification*, 60 Fed. Reg. 64260, 64274-75 (Dec. 14, 1995).⁶

3 In contrast to the circumstances in *Wetterling*, the Committees did not pay for the
4 expenses associated with the Concert's promotional materials, some of the Concert's
5 promotional materials suggest a corporate endorsement, and the names and logos used in the
6 Concert's promotional materials were those of the Businesses. Although the name and logo of
7 M&A Development, LLC, in the Concert's solicitations were things of value, the value of the
8 names and logos of this particular business is likely insubstantial, and the fundraising event was
9 relatively modest in size. The Concert raised \$13,500 and was attended by less than 200 people.
10 Under these circumstances, further use of the Commission's resources for an investigation is not
11 warranted. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985). Accordingly, the Commission
12 dismisses the allegation that M&A Development, LLC, contributed to the Committees in
13 violation of 2 U.S.C. § 441b(a) and cautions M&A Development, LLC, for its apparent violation
14 of 2 U.S.C. § 441b(a).

15 **V. CONCLUSION**

16 The Commission dismisses the allegation that M&A Development, LLC, contributed to
17 the Committees in violation of 2 U.S.C. § 441b(a), *see Heckler v. Chaney*, 470 U.S. 821, 831
18 (1985), and cautions M&A Development, LLC, for its apparent violation of 2 U.S.C. § 441b(a).

⁶ The Commission has previously considered a specific regulation applicable to the use of corporate logos when promulgating regulations in response to the Supreme Court's decision in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986). The Commission considered alternative drafts and ultimately was unable to reach a majority decision. *See Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates Explanation and Justification*, 60 Fed. Reg. 64260, 64268 (December 14, 1995). Nevertheless, as discussed above, and as observed by the Commission in MUR 5578 and AO 2007-10 after the 1995 rulemaking, the use of a corporate name or logo is something of value within the meaning of 2 U.S.C. § 441b(a).